



BDMAT

Birmingham Diocesan
Multi-Academy Trust

Disciplinary Policy

Issued: October 2018
Date of review: Autumn 2021



1.0 Introduction

- 1.1 The purpose of this policy is to ensure that all employees achieve and maintain satisfactory standards of conduct and behaviour. It also provides a fair and consistent method of dealing with alleged failures to observe these standards.
- 1.2 The application of the disciplinary procedure is strictly confidential and all aspects including all documentation and records shall be treated as such.
- In minor cases of alleged misconduct, the manager should initially seek to resolve the matter informally by discussion with the employee.
 - The disciplinary procedure is to be used where an employee's conduct is alleged to be unsatisfactory.
 - Each step and action under the procedure must be taken without unreasonable delay by either the Trust or the employee.
 - The timing and location of meetings must be reasonable.
- 1.3 This policy has been written to cover all staff working within BDMAT at both school and central team level. As a result, the term headteacher and manager are interchangeable.
- 1.4 BDMAT refers to the 'Birmingham Diocesan Multi-Academy Trust'
- 1.5 Staff with line management responsibility will undertake the requisite training on this policy and will be aware of their obligations under this policy.

2.0 Powers

- 2.1 In the case of a school Headteacher and centrally employed staff the Disciplinary Officer will be the Chief Executive Officer (CEO). The disciplinary committee will be a committee of three directors of the board of BDMAT. For all other staff in schools the Disciplinary Officer will be the headteacher or the member of staff's line manager with the disciplinary committee comprising a committee of at least 3 governors of the local academy board.
- 2.2 For allegations regarding the Chief Executive Officer, a nominated Director(s) will have the authority to be the Disciplinary Officer and any appeal will be to the Chair of the Trust.
- 2.3 In a case where the person who would normally be the Disciplinary Officer is compromised through existing circumstances or, will need to investigate the matter/may be a witness to the matter or be significantly involved in the investigation or, does not have the resource to deal with the matter at that time – the case will normally be dealt with by an alternative employee at the same level or the next level of management (i.e. another Deputy Headteacher, another Headteacher within the Trust, or the CEO). Central Trust officers may also be requested to

lead investigations, reporting to the Headteacher or Chair of the Local Academy Board. In cases where the Chief Executive Officer is unable to deal with the matter, the matter will be discussed with the Chair of the Trust to determine the appropriate way to deal with it.

3.0 The Process

3.1 Stage 1 - Initial Discussion

In cases of misconduct (see Appendix A), the appropriate manager must make initial enquiries about the incident/concern. The purpose of this discussion is to ascertain the employee's immediate response to the concern(s) and to establish the facts in order to determine whether any further action (e.g. further investigation or suspension) is required. It is important that the meeting does not turn into a Formal Investigatory Meeting and a detailed conversation undertaken regarding the concern(s).

The potential outcomes of the meeting are:

- no further action is necessary;
- deal with the matter informally, i.e. good practice discussion / expectation letter, mediation, training;
- refer the matter to a Formal Investigatory Meeting (possibly including suspension of the employee).

In cases where gross misconduct (see Appendix B) is alleged, managers may bypass the initial discussion meeting and progress directly to a Formal Investigatory Meeting (Stage 2).

3.2 Stage 2 - Investigation

Where it is not possible to deal with the matter informally a decision will then be made by the headteacher / manager as to whether an investigation is required, and a Disciplinary Officer will be appointed by the headteacher / manager to undertake a formal investigation if this is required. The Disciplinary Officer may be the headteacher / manager even if they were involved in the initial review of the case. The headteacher / manager may decide to commission an independent investigative officer to undertake the investigation. If the headteacher / manager will need to be a witness in any upcoming investigation the headteacher / manager may delegate, the role of Disciplinary Officer to a senior member of staff within the school / BDMAT. The investigating officer will make HR aware that there is an investigation ongoing and then keep them informed throughout this process. He may advise the circumstances when an independent or alternative investigator should be appointed.

- 3.3 The Disciplinary Officer may decide that in order to ensure a robust investigation that the investigation should be undertaken by a person independent of the school / BDMAT. The disciplinary officer should discuss this with the CEO / Chair of Directors before appointing an independent investigation officer. The role of the independent officer will be to interview all

necessary witnesses and write a report to the disciplinary officer. The Disciplinary Officer will then make a decision as to whether a disciplinary hearing is required. The Disciplinary Officer may decide that it is appropriate that the independent investigative officer attends the committee and presents the report themselves and are subject to questions by the committee. The purpose of an investigation is for the Trust to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any relevant witnesses, and/or reviewing relevant documents.

- 3.4 Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until the investigation has been concluded.
- 3.5 The Trust allows an employee to bring a work colleague or trade union representative to attend. If the choice of companion is unreasonable, the Trust may ask for the employee to choose someone else. For example:
 - if in the Trust opinion the employee's companion may have a conflict of interest or may prejudice the hearing; or
 - if the companion is unavailable at the time a hearing is scheduled and will not be available for more than 5 working days afterwards.
- 3.6 The employee must co-operate fully and promptly in any investigation once informed of the investigation. This will include informing the Trust of the names of any relevant witnesses, disclosing any relevant documents to the Trust and attending investigative interviews if required. A failure to comply may lead to disciplinary action.
- 3.7 The employee must make every effort to attend an investigative interview and failure to attend, without good reason may be treated as misconduct in itself. If the employee fails to attend without good reason, or if he/she is persistently unable to do so (for example for health reasons), the Trust may have to take a decision, in their absence based on the available evidence.
- 3.8 Once the headteacher / manager has undertaken the investigation or reviewed the file of the independent investigator they will make a decision as to whether the employee needs to attend a disciplinary hearing.

4.1 **Stage 3 – Disciplinary Hearing**

The employee will be notified in writing of the allegations to be answered (plus any documentary evidence) before the disciplinary hearing.

4.2 The Trust will give a minimum of 5 working days' notice of a disciplinary hearing. Supporting documents (the investigation report and witness statements) will be provided at this stage to the employee.

4.3 The employee must make every effort to attend a disciplinary hearing and failure to attend, without good reason may be treated as misconduct in itself. If the employee fails to attend without good reason, or if he/she is persistently unable to do so (for example for health reasons), the Trust may have to take a decision, in their absence based on the available evidence.

4.4 At any disciplinary hearing or appeal hearing the employee will have the right to put forward his/her case. The Trust will only consider evidence presented by the employee which is relevant to the allegations. Such evidence must be provided to the Trust at least five full working day before the disciplinary hearing or appeal.

4.5 The Trust shall be entitled to manage the time and resources allocated to a disciplinary matter including managing the time of a disciplinary hearing and allocating time within a disciplinary hearing. This may result in limiting the amount of time allocated to the parties to present their cases, but the employee should be given sufficient time to ensure a fair process is undertaken.

4.6 After the hearing, the employee may be notified after a short adjournment or they will be written to with details of the outcome.

- the decision and the reasons shall be communicated in writing to the employee.
- an employee will be advised of his/her right of appeal and how to exercise that right.

5.0 **Procedure at Disciplinary Hearings**

5.1 The disciplinary committee will normally consist of 3 members of the Local Academy Board who have not been involved in the investigation, for centrally employed staff it will be three directors. Before the meeting is convened it will be decided who will chair the meeting. The meeting will be minuted by the clerk to governors / directors. If the disciplinary is against the headteacher then 1 member of the committee must be a director of the board of directors at BDMAT. The committee can request to be supported by a HR representative. In serious cases, such as cases involving allegations of professional misconduct and where there is a real risk

of dismissal, the committee will normally be supported by a HR representative, at other occasions this is at the discretion of the committee.

- 5.2 At the beginning of the hearing, the chair will introduce those present and the purpose of the meeting. The employee will be reminded of his/her right to be accompanied (if the employee has not chosen to be accompanied by a trade union representative or a work colleague).
- 5.3 The disciplinary officer will go through the allegations against the employee and the evidence that has been gathered. The disciplinary officer may ask the independent investigative officer to present this evidence. The employee will be able to respond and present any relevant evidence. The disciplinary officer will outline their recommendation for any disciplinary sanction to be imposed on the member of staff.
- 5.4 Management and the employee may ask relevant witnesses to appear at the hearing with the prior agreement of the chair of the disciplinary hearing. Cross-examination of witnesses by all parties must be conducted in a professional and courteous manner. The Chair of the meeting will ensure that this takes place and will intervene should s/he be concerned that this requirement is not being followed by any questioner and will advise on how future questioning will take place.
- 5.5 Should the employee wish to question the evidence provided by a witness in the investigation then this should be raised by the employee during the investigation or upon receipt of the investigation documents.
- 5.6 The employee will be given a full opportunity to ask questions and put forward any mitigating factors which he/she believes are relevant to the allegations.
- 5.7 Once the employee has been afforded an opportunity to explain their position, the chair of the committee will either:
 - give the decision and explain the reasons for the decision, and confirm in writing, normally no more than 7 days after the hearing; or
 - inform the employee that the decision will be given in writing, normally no more than 7 days after the hearing.
- 5.8 The chair of the committee may adjourn the disciplinary hearing if the Trust needs to carry out any further investigations in light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider and comments on any new information obtained before a decision is given.

6.0 Levels of Disciplinary Action

6.1 If the disciplinary committee believes that 'in all probability' the member of staff has breached the misconduct / gross misconduct guidelines, there are four levels of disciplinary sanction, each of which is designed to cover the varying seriousness of the cases. The stages give a proper sequence for persistent cases. Where the case is of sufficient importance or seriousness to use the procedure, disciplinary action will be taken at whatever stage appears appropriate to the circumstances. The disciplinary committee have the authority to exercise their discretion in implementing any of these warnings, including the duration and type of warning given.

6.2 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be dismissal without notice and without pay in lieu of notice

6.3 The following decisions will be confirmed in writing:

- **The decision to issue no warning**
- **Level 1 - A first warning** may be given where the case is of sufficient importance or seriousness to bring to the attention of the employee formally.
- **Level 2 - A written warning** may be given where the case has already involved a first warning and insufficient improvement has been made, where further misconduct has occurred, or where the case is of sufficient importance or seriousness.
- **Level 3 - A final warning** may be given where the case has already involved a written warning and insufficient improvement has been made, where further misconduct has occurred or where the case is of sufficient importance or seriousness. Also, where gross misconduct may not warrant dismissal for example due to mitigating circumstances.
- **Level 4 - Dismissal.** An employee is likely to be dismissed where the case has already involved the final warning and insufficient improvement has been made or where further misconduct has occurred or where the case is so serious as to constitute gross misconduct or where there is some other substantial reason.

7.0 Alternatives to dismissal

7.1 In some cases, the Trust may at its discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning. Examples include:

- demotion;
- transfer to another school / department or job;
- loss of seniority.

8.0 The Decision Letter

8.1 A letter detailing the decision will be given to the employee and a copy placed on their personnel file if a warning is issued.

8.2 Following the outcome of the hearing the decision letter will state:

- the decision (i.e. that there is no case to answer or the findings and the appropriate level of disciplinary sanction);
- the reason for the decision;
- the course of action to be followed by the employee;
- time scale in which improvement is required, if applicable;
- where assistance is required, the assistance which will be made available to the employee (e.g. training and guidance);
- the date on which the warning will lapse;
- that further disciplinary action will be considered if there is further misconduct or insufficient improvement within the timescale of the warning;
- the right of appeal against the decision and how to exercise that right.

If the warning is a final warning it will also state that if the employee's conduct continues to be unsatisfactory or if there is further misconduct it may lead to dismissal.

9.0 Time Limit for Warnings

9.1 **First warning** the time limit shall be 6 months from the date of the decision.

Written warning the time limit shall be 9 months from the date of the decision.

Final warning the time limit shall be 12 months from the date of the decision.

After these time limits the warnings will be disregarded for future disciplinary procedures, although some safeguarding warnings will need to be reported to future employers. 'Live warnings' will be reported to potential employers and can be included as part of the criteria for redundancy procedures.

9.2 However, in exceptional circumstances misconduct may be so serious that if repeated at any time in the future the likely consequence is dismissal. The person/s making the decision may impose a final written warning and specify that such a warning will remain in force for a longer period of time.

9.3 Breaches of discipline will be disregarded after the specified period of satisfactory conduct but will remain permanently on the employee's personnel file.

10.0 Stage 4 - Right of Appeal

- 10.1 All employees have the right of appeal against the decision of the disciplinary committee if they feel that these procedures were not followed.
- 10.2 Appeals must be lodged in writing to the Headteacher (or CEO in disciplinary issues relating to the headteacher / the CEO for appeals linked to centrally employed staff and the Chair of Directors in the case of appeals regarding the CEO) within five working days of the decision being communicated to the employee (i.e. usually within five days of the date of the outcome letter). On receiving the appeal an appeals committee will be formed, the chair will be the 'appeals officer'.
- 10.3 If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employee will be reinstated with no loss of continuity of pay.
- 10.4 If the employee raises any new matters in his/her appeal, the appeal officer may need to carry out further investigation. If any new information comes to light the appeal officer will provide the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing.
- 10.5 The Trust will give the employee written notice of the date, time and place of the appeal hearing.
- 10.6 The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at the Trust discretion depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.
- 10.7 The appeal hearing will be conducted impartially by three governors of the local academy board (or 3 different directors in cases involving the CEO / centrally employed staff) who have not been previously involved in the case. The employee may bring a companion to the appeal hearing. Where three new governors are not available BDMAT may second governors from a different BDMAT school or BDMAT central staff on to the committee. For cases involving the discipline of a headteacher then one member of the committee must be a director of BDMAT, not involved in the original disciplinary committee.
- 10.8 The chair of the appeal committee may adjourn the appeal hearing if the Trust need to carry out any further investigations in the light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before a decision is given.
- 10.9 The appeal committee may:

- confirm the original decision;
- revoke the original decision;
- substitute a different penalty.

10.10 The appeal officer will inform the employee in writing of the final decision as soon as possible.

10.11 There will be no further right of appeal.

11.0 The right to be accompanied at a Disciplinary Meeting or Appeal Meeting

11.1 The employee may bring a companion to any disciplinary or appeal hearing, including investigation meetings under this procedure. The companion may be either a trade union representative or a work colleague, providing the companion is not acting in a legal capacity. The employee must tell the disciplinary officer who his/her chosen companion is, in good time before the hearing (at least one day before the meeting).

11.2 A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

11.3 If the choice of companion is unreasonable, the Trust may ask for the employee to choose someone else. For example:

- if in the Trust opinion the employee's companion may have a conflict of interest or may prejudice the hearing; or
- if the companion is unavailable at the time a hearing is scheduled and will not be available for more than 5 working days afterwards.

11.4 The Trust may, at its absolute discretion, allow the employee to bring a companion who is not a work colleague or union representative (for example a member of family) if this will help the employee overcome a disability.

11.5 At a hearing, the companion may make representations to the Trust and ask questions but should not answer questions on the employee's behalf. The employee may confer privately with his/her companion at any time during a hearing.

12.0 Trade Union Officials

12.1 Although normal disciplinary standards will apply to their conduct and performance as employees, no disciplinary action or suspension will be taken until the circumstances of the case have been discussed with an appropriate full-time official. In the case of suspension this may not be practical and should not prevent management taking action.

13.0 Suspension

- 13.1 In certain circumstances consideration may be given to suspending the employee from their place of work at the outset of the investigation or at any stage during the investigation. The suspension will be for no longer than is necessary and the Trust will confirm the arrangements to the employee in writing. When considering a suspension the Trust will also look into whether there are alternatives available, such as redeploying the member of staff to a different department or work site for the duration of the investigation or where appropriate providing alternative work that does not interfere with the ongoing investigation.
- 13.2 The decision to suspend may only be taken by the Headteacher or Chief Executive Officer. In the event of unavailability of the Headteacher / Chief Executive Officer the decision may be delegated to a nominated Deputy Headteacher (for school staff) and another executive officer for centrally employed staff e.g. the Finance Director, who must make every effort to contact the Headteacher or Chief Executive Officer to discuss the case and be authorised to make the decision. Where suspension of the Headteacher is required the Chief Executive Officer or Chair of the Local Academy Board only have the power to do so and must notify the full Board of Directors. Where suspension of the Chief Executive Officer is required the Chair of the Trust only has the power to do so and must notify the full Board of Directors, in their absence the vice chair may take this action.
- 13.3 While the employee is suspended, he/she should not visit the school site or contact any of its pupils/students, parents, governors, Chair of Governors or Trust Directors, members or colleagues, unless the employee has been authorised to do so by the Headteacher or Chief Executive Officer. Where the suspended member of staff comes into accidental contact with any of its pupils/students, parents, governors, Chair of Governors or Trust Directors, members or colleagues they will make the Headteacher and / or the Investigating Officer aware of this at the earliest convenience.
- 13.4 Whilst suspended the member of staff should return to the school any keys or passes to access the school / school site. The member of staff should be suspended from their school email and internet access whilst suspended. Where the member of staff requires access to their school email for the purposes of accessing evidence that could assist in the investigation of the case, they will get prior permission to do this from the Investigating Officer and / or the Headteacher/CEO.
- 13.5 Suspension is a neutral act and does not imply that any decision has already been made about the allegations. The employee will continue to receive his/her salary during the period of suspension.

13.6 Every effort will be made to avoid lengthy periods of suspension. The decision to suspend and the conditions of suspension will be reviewed periodically by the headteacher (or CEO for headteacher and centrally employed staff suspensions and by the Chair of directors for suspension of the CEO), and the employee will be updated as and when necessary (normally monthly).

14.0 Criminal Charges

14.1 Where the employee's conduct is the subject of a criminal investigation, charge or conviction the Trust will investigate the facts before deciding whether to take formal disciplinary action.

14.2 Whilst every effort will be made to wait the outcome of any police investigation / trial, the Trust reserves the right to continue with any investigation and disciplinary hearing. Where the employee is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, the Trust may have to take a decision based on the available evidence.

14.3 A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if the Trust considers that it is relevant to the employee's employment.

Appendix 1 - Examples of Misconduct

- 1.1 Persistent poor timekeeping
- 1.2 Unauthorised absence from work
- 1.3 Failure to comply with a reasonable management instruction
- 1.4 Failure to comply with sickness absence procedures
- 1.5 Acting in an aggressive or threatening manner or using foul or abusive language towards children, colleagues, managers or stakeholders e.g. governors / directors / parents
- 1.6 Misuse or unauthorised use of school / BDMAT facilities, equipment or resources
- 1.7 Inappropriate use of work time, e.g. excessive use of time for personal conversations, correspondence, telephone calls, emails/internet use etc.
- 1.8 Knowingly being an accessory to, condoning or failing to report a serious disciplinary offence
- 1.9 Dishonesty, deliberate misinterpretation of information or falsification of records
- 1.10 Unauthorised use or disclosure of confidential information gained through employment with the school / BDMAT or failure to protect such information
- 1.11 Being unfit for duty through use of illegal substances or alcohol
- 1.12 Smoking in any school owned premises and grounds or within BDMAT offices
- 1.13 Use of e-cigarettes in any school / BDMAT premises
- 1.14 Failure to observe Health and Safety rules by act or omission, or negligence that threatens health and safety
- 1.15 General conduct in the workplace that has a negative impact on the work of the school, department etc. on colleagues, or on service delivery
- 1.16 Failure to declare any other work undertaken while being employed by BDMAT
- 1.17 Damage to property
- 1.18 Failure to comply with the trust's policies and procedures
- 1.19 Deliberate failure to reach required standards of performance
- 1.20 Deliberate failure to carry out duties and responsibilities
- 1.21 Inappropriate behaviour/conduct towards management or colleagues

Appendix 2 - Examples of Gross Misconduct

- 2.1 Dishonest acts and deliberate falsification of records which result in or could result in serious consequences
- 2.2 Falsification of qualifications which are a stated requirement of employment or which resulted in financial gain
- 2.3 Serious insubordination
- 2.4 Conduct that is a serious abuse of position
- 2.5 Bringing the school/BDMAT into serious disrepute or causing a serious loss of confidence in the school/MAT
- 2.6 Theft or fraud
- 2.7 Undertaking other paid employment whilst receiving sick pay or other benefits from BDMAT during a period of sickness or unauthorised absence without prior management agreement
- 2.8 Deliberate disregard of the BDMAT's financial procedures and rules
- 2.9 Physical or verbal assault or violence
- 2.10 Deliberate and serious damage to BDMAT property
- 2.11 Unauthorised removal of BDMAT property
- 2.12 Serious breach of Health and Safety rules and/or regulations
- 2.13 Breach of Equal Opportunities Policy.
- 2.14 Making defamatory statements in the course of employment (e.g. making statements that are or could be slanderous or libellous). (A defamatory statement is a statement that will injure the reputation of another in the estimation of members of society generally).
- 2.15 Being unfit for duty through use of illegal substances or alcohol in circumstances where it could constitute a health and safety hazard or where it would be in breach of a position of responsibility and trust
- 2.16 Loss of confidential or sensitive data through negligence, loss of important or expensive equipment through negligence.
- 2.17 Deliberately accessing internet sites containing pornographic, offensive or obscene material
- 2.18 Criminal offences committed at work
- 2.19 Criminal offences and/ or other conduct outside employment which would prevent an employee from continuing to do their job or which affects their suitability to perform their work or is liable to damage the school/ BDMAT.
- 2.20 Serious negligence which causes or might cause unacceptable loss, damage or injury
- 2.21 Serious breach of confidence (subject to the Public Interest (Disclosure) Act)
- 2.22 Breach of the school's / local safeguarding board's or BDMAT's safeguarding procedures and policies including child protection and Prevent procedures
- 2.23 Offensive or abusive behaviour towards others, including harassment, bullying or victimisation
- 2.24 Serious breach of the school / BDMAT staff conduct policy